FILE
FEB 28 1
CHARLES ELMORE

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 335

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

RESPONDENT'S BRIEF ON HEARING OF WRIT OF CERTIORARI

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Respondent.

EDWARD A. KREGER,
The Judge Advocate General,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1928

NO. 335

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS,
Petitioner,

v.

COLLECTOR OF INTERNAL REVENUE,
Respondent.

RESPONDENT'S BRIEF ON HEARING OF WRIT OF CERTIORARI

I.

Respondent's brief in opposition to the petition for certiorari is believed substantially to cover the case. It is requested that it may stand as respondent's brief on the hearing, with these additions.

II.

1. Petitioner's brief is almost wholly devoted to questions that are not in the case. Only pages 34 to 40 are directed to the discussion of the only pertinent question, viz., whether or not the sales here in question were "made" in the Philippine Islands, or in the United States.

2. Petitioner's counsel states that it was the intention of this case to present "neatly" the (assumed) question of whether income derived from "sales made within the United States" was to be included in the computation of income of

such foreign corporations "derived from sources within the Philippine Islands." (Petitioner's brief, p. 8, and pp. 2, 34).

And, under the heading, "**The Jurisdiction of this Court**", *petitioner wholly misstates the question at issue*, saying (petitioner's brief, p. 2):

> "the precise question being whether income derived by the petitioner from sales 'made in the United States' * * * is income derived from 'sources within the Philippine Islands' and therefore taxable under the Philippine tax law."

But there is no such question in this case.

Respondent categorically admits that income derived by a foreign corporation doing business in the Philippine Islands, such as this petitioner (Spanish corporation with a branch in the Philippines; "Agreed Statement of Facts", Par. I, p. 8), *from sales actually "made" in the continental United States, is not income derived "from sources within the Philippine Islands"; and, therefore, is not taxable under the Philippine income tax law here in question.*

There is no question about that. Respondent has never contended that income from sales actually made in the United States is subject to the Philippine income tax law.

The practical question in the case, and the question that respondent understands was intended to be presented, and that is a question of interest to the Philippine business community, not only to this particular petitioner, but also to others, is: Whether or not, under such circumstances as those shown here,

> —where foreign corporations, doing business in the Philippines, send merchandise from Manila to the continental United States to agents here of their Manila branches, with directions to negotiate sales subject to approval and ratification in Manila, and sales are so negotiated, and are so approved in Manila, and, pursuant to such approval, the agents, here in the continental United States, deliver the goods, collect the proceeds, and remit the proceeds to Manila,—

under such circumstances, the sales are to be considered as sales made in the Philippines, and so subject to the Philippine

income tax law as upon income derived "from sources within the Philippine Islands"; or, on the other hand, are such sales to be considered as sales actually "made" here in the continental United States, so that the income so derived therefrom by the Philippine branches of such foreign corporations doing business in Manila is not to be treated as income derived from "sources within the Philippine Islands", and, hence, as not subject to the Philippine income tax law.

That, as respondent understands it, is the question presented by this record; and, on the merits, is the real question in the case.

To repeat, the whole question is whether in these cases these particular sales were or were not "made" in the Philippine Islands. If they were, then, of course, the income therefrom derived is income derived from "sources within the Philippine Islands." On the other hand, if the sales are to be considered as "made" in the United States, then, equally of course, the income therefrom is not income derived from sources within the Philippine Islands.

That is all there is to it.

Where the sales were "made" is the decisive question in the case.

On that question counsel cite no decisions. They do not even suggest that there are decisions contrary to those cited by respondent.

III.

1. The power and duty of the Insular Supreme Court to interpret and determine the meaning to be given to the "agreed statement of facts" filed in the Court of First Instance (R. 8-12) in accordance with local procedure, is akin to its power and duty to interpret and determine the meaning to be given to acts of the local legislature.

This court will not disturb the interpretation so given to the stipulation by the Territorial Supreme Court, unless "clearly erroneous", for like reasons as those because of which it does not disturb the local interpretation of local acts of the legislature, viz., that in each case the local Territorial Supreme Court, familiar with local habits and conditions, is in better

position to put itself into the shoes of the parties using the language than is this court.[1]

2. And, in any event, the Philippine Supreme Court's interpretation of the stipulation is not only manifestly *not* "clearly erroneous"; but, on the contrary, is the right interpretation, on the face of the language used.

3. Of course, the stipulation was intended to be, and is to be treated as, a stipulation of *facts*. It is the *facts* stated which bind the parties and the court in considering this case. And only the facts; not conclusions of law that might be inferred from particular words used. And so the Insular court was clearly right in declining to pick out of its context, and give a technical interpretation to, the phrase "sold in the United States" (paragraphs IV, V and VI, "Agreed Statement of Facts," R. 9, 10); which would have negatived the conclusion to be drawn, on the whole stipulation, from the facts (otherwise) clearly stated by the parties.

4. Taking the *facts* alone, as they appear in this "Agreed Statement" (R. 8–12),—and disregarding, as the Insular Court rightly did, any conflicting conclusions that might have been drawn from a technical interpretation of the words "sold" and "sale" ineptly used by the draftsman,—then it clearly appears that paragraphs IV, V, and VI of the stipulation clearly mean, simply, just as interpreted by the Insular Supreme Court:

> That the Philippine branch of the plaintiff corporation, on various dates during the year 1922, sent certain merchandise (sugar, Par. "IV"; tobacco, Par. "V"; copra and coconut oil, Par. "VI") from the Philippine Islands to the continental United States; that its agency here in the continental United States negotiated sales from time to time, "subject to confirmation and absolute control as

---

1 This court has repeatedly said that it does not disturb the judgments of territorial courts of last resort upon questions of local procedural law, any more than upon other questions of local law. *Sweeney* vs. *Lomme*, 89 U. S. 208, 213; *Fox* vs. *Haarstick*, 156 U. S. 674, 679; *Copper Queen Mining Co.* vs. *Arizona Board of Equalization*, 206 U. S. 474, 479; *Alton* vs. *Johnson*, 231 U. S. 106, 110; *Ibanez* vs. *Hong Kong, etc., Bkg. Corp.*, 246 U. S. 621, 627; *Fiemister* vs. *United States*, 207 U. S. 372, 375; *Dowdell* vs. *United States*, 221 U. S. 325, 327–329.

to price and other terms and conditions thereof, by the plaintiff's Philippine branch";

that (*inferentially*), after such confirmation in the Philippine Islands, the agency in the continental United States delivered the goods, and sent the proceeds to plaintiff's Philippine branch; and that, upon the aggregate of such transactions for that year, the plaintiff's Philippine branch realized a net profit of ₱400,324.85, upon which the Collector levied the 3% income tax here in question.

5. Those are the *facts* appearing in the stipulation. The Insular Supreme Court rightly interpreted it as binding the parties and the court only by those *facts;* and rightly disregarded contrary conclusions of law urged upon it by counsel, sought to be based upon a technical interpretation of the words "sold" and "sale" ineptly used by the parties.

6. Considering the *facts* as thus stated, the sales were clearly "made",—that is, *consummated,—in the Philippine Islands,* where the minds of the parties met, *by the act of plaintiff's Philippine branch approving and accepting, there, in Manila, the offers made to it* through the medium of its agency here in the United States, from time to time.

7. *That acceptance, in Manila, was the determinative act. At that moment the relations of the parties changed.*

Then, and then only, was the sale complete. Then, and then only, the relations of the parties changed. From that moment the plaintiff was no longer the owner of the goods sold. From that moment the title was in the purchaser; and, from that moment, plaintiff's agency here in the continental United States ceased to hold the goods as plaintiff's bailee, and became the bailee of the purchaser. From that moment the relation between the plaintiff and the purchaser, as to the purchase price, became the relation of creditor and debtor.

The sales were made in the Philippine Islands, and nowhere else. Petitioner cites no decisions to the contrary. The law is well settled.

This is determinative of the case.

IV.

But even if the Insular Supreme Court's decision were to be interpreted as meaning (*which it clearly does not*) that the Philippine statute authorizes income from sales, actually "made" within the continental United States, to be taken into account in levying the Insular income tax on foreign corporations doing business there; yet it by no means follows that such a construction of the Philippine statute would necessarily violate the "uniformity" clause of Section 3 of the Organic Act for the Philippine Islands, as petitioner rather faintly suggests might be the result (Petitioner's Brief, pp. 32–33).

> "Tax laws are practical undertakings. They deal with normal business enterprises. The requirement of uniformity does not extend to the utterly impractical limit of compelling mathematical or scientific equality of incidence. No property tax accomplishes that result. The owner of realty, unrented or leased to an irresponsible tenant, finds his tax a heavy burden, while his neighboring owner of property leased at a good and promptly paid rental finds the tax easy to pay. The shrewd buyer of foreign goods subject to an *ad valorem* import tax pays less tariff and thus adds to the margin between him and his less efficient competing importer. But these inequalities of result grow out of inequalities in business conditions and activities, not possible of control by law. They are unavoidable; they do not originate in the law. They are not cases of intentional and arbitrary discrimination."
>
> *Sanchez Morales & Co., Inc.* v. *Gallardo, Treas.*, 18 F. (2d), 550.

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Respondent.

EDWARD A. KREGER,
The Judge Advocate General,

DELFIN JARANILLA,
Attorney General of the Philippine Islands,
Of Counsel.